

REMARKS

Claims 1-5, 11-28 and 43-49 have been amended. Claims 6-10, 29-42 and 50-69 have been cancelled and new Claims 70-82 have been added. Accordingly, Claims 1-5, 11-28, 43-49 and 70-82 remain presented for examination. Applicants reserve the right to prosecute non-elected claims in a divisional or continuation application.

Applicants have re-presented the entire amended claim set, as requested in the Office Communication, in order to show the proper status identifier for Claim 27.

Discussion of Double Patenting

The Examiner argued that the comments made by Applicants regarding the double patenting rejection were not fully responsive. According to the Examiner, the only appropriate responses to a provisional obviousness-type double patenting rejection are 1) argue the merits of the rejection; 2) state that upon notification of allowable subject matter a terminal disclaimer will be filed; or 3) file a terminal disclaimer. Applicants respectfully disagree.

As noted by the Examiner, purportedly conflicting Claims 29-66 of U.S. Application No. 10/086,941 ("941 application") have not been patented. As the '941 application has not matured into a patent, it would be premature to file a terminal disclaimer in the pending application. There is no reason to terminally disclaim over an application, which may or may not mature into a patent.

Similarly, it is premature to argue the merits of the provisional rejection, since the claims of both applications are undergoing prosecution and may be amended at any time. Such amendments may make the claims clearly non-conflicting, thus obviating the need for a terminal disclaimer. It is also not necessary at this point in prosecution to state that upon notification of allowable subject matter a terminal disclaimer *will* be filed in the present case. For the reasons cited above, notification of allowable subject matter in the pending application may or may not *require* the filing of a terminal disclaimer. If the '941 application has not matured into a patent at that time, or has been amended so that the claims are clearly not conflicting, no such terminal disclaimer would be necessary.

Thus, for all of the reasons discussed above, Applicant properly responded to the Examiner's provisional double patenting rejection by requesting that the rejection be held in abeyance until the '941 patent is patented. If the '941 application is never patented, there would be no reason for a terminal disclaimer to be filed in the present case.

However, solely to advance prosecution of this case, Applicants state that upon notification of allowable subject matter in the present case, Applicants will file a terminal disclaimer if necessary to overcome a proper obviousness-type double patenting rejection in view of the '941 application.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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